

MEMO TO FILE

TO: The file

FROM: Grace M. Robiou, Chief *Grace M. Robiou 2-26-2015*
National Water Quality Standards Branch
Standards and Health Protection Division
Office of Science and Technology

DATE: February 26, 2015

RE: EPA'S Position Regarding Existing Use Requirements at 131.10(g) and Variances

In an April 2014 comment letter to Montana EPA said, "Variances are not authorized in situations where the site-specific facts indicate that existing uses would be impacted. However, the EPA recognizes that there may be situations where it would be possible for a discharger to demonstrate that the variance protects the existing use while providing temporary relief from meeting the underlying water quality standard. In these cases, a variance may be justified."

Upon further analysis, EPA has realized that variances, by definition, "protect the existing use while providing temporary relief from meeting the underlying water quality standards." As such, variances will always meet the current regulatory existing use prohibition because variances do not ever "remove" an existing use.

As described in EPA's approval document, this position is based on the fact that designated uses and existing uses are not time dependent, but a variance is. This thinking is consistent with the approach that EPA plans to take in its final rulemaking effort which, instead of having any requirement concerning "existing uses," requires that a variance cannot result in lowering the currently attained water quality. That is, no variance can make today's water quality condition worse.